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The Multiple Self: Exploring Between and Beyond Modernity and Postmodernity

john a. powell*

[W]e are all androgynous, not only because we are all born of a woman impregnated by the seed of a man but because each of us, helplessly and forever, contains the other—male in female, female in male, white in black, and black in white. We are a part of each other. . . . [N]one of us can do anything about it.

—James Baldwin¹

I frequently have difficulty sorting out how to think about a number of issues in my life. The problem is not so much that I do not know *what* I think and feel. Instead, it is that I think and feel many different and conflicting things and I do not have the capacity to simply sort them out.² Sometimes, I let the different voices engage each other in a dialogue and find an intrasubjective solution. Other times I allow the discordance to exist. Often, I engaged my friend Trina Grillo in the discussion. Trina was, and is, not just a good friend; she is a part of the multiple aspects that constitute me. In the sorting process, Trina did more than help me identify existing voices. She often helped me create new voices that somehow made deep claims upon me, upon us.

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1. JAMES BALDWIN, *Here Be Dragons*, in *THE PRICE OF THE TICKET: COLLECTED NONFICTION 1948-85*, 677, 690 (1985).

2. Kenneth Gergen talks about the difficulty of choosing between competing voices or claims made upon oneself. He argues that there are multiple selves, each of which makes its own claims and demands. Implicit in this argument is that the notion of the unitary self has been fractured. While Gergen attributes this sort of fracturing to environmental and technological changes, as this Essay will make evident, others see it as the very nature of existence and/or discourse. See KENNETH J. GERGEN, *THE SATURATED SELF: DILEMMAS OF IDENTITY IN CONTEMPORARY LIFE* (1991).

She helped create the spaces where the silence laced between and within the voices could be heard.

The dominant narrative of Western society would find what I have just written problematic, and perhaps unintelligible. This narrative, purporting to be a meta-narrative, denies that we are or can be multiple and fractured and still remain "normal."³ It makes many claims upon us regarding the nature of the individual. In fact, its individualistic focus is one of the deeply rooted ideologies of Western society. It is an "ideology" in the sense that Iris Young defines ideology: a set of ideals that "helps to reproduce relations of domination or oppression by justifying them or by obscuring possible more emancipatory social relations."⁴

In this Essay I attempt to highlight some of the ways that the ideals of individualism, the individual, and the self are used to destructively frame the ways we talk about the self and race. As a necessary premise of this task, I begin by examining the Western vision of the self, the individualistic norm that pervades our society. By questioning this largely unexamined norm, I invite the reader to look at what has been traditionally excluded.⁵

3. Theories of language assert that one of the powers of language is its ability to determine that which is considered normal and that which is considered abnormal. See, e.g., MICHEL FOUCAULT, *THE ORDER OF THINGS* (Tavistock Publications Ltd. 1970) (1966).

4. IRIS MARION YOUNG, *JUSTICE AND THE POLITICS OF DIFFERENCE* 112 (1990).

5. Toni Morrison states that in dealing with matters of race and racial practices, it is important to look at not only what is present, but what is absent, what has been excluded. She also discusses how her understanding of the role of race in American literature fundamentally shifted when she began to focus on the writers' use of structures and device, how she felt as though she had been looking at a bunch of goldfish all of her life and suddenly noticed the fish bowl. TONI MORRISON, *PLAYING IN THE DARK: WHITENESS AND THE LITERARY IMAGINATION* 13-16 (1992). I have similarly described the role of the public interest lawyer to include making the invisible visible. See JOHN A. POWELL, *Righting the Law: Seeking a Humane Voice*, 96 W. VA. L. REV. 333, 344 (1993-1994) (explaining that public interest lawyers must look to both the needs of individual clients and to the invisible forces which situate clients in a larger social context). One of the ways that dominant narratives and ideologies work to subordinate is by making the social causes of subordination seem natural and inevitable, that is, to make the practices invisible. See generally YOUNG, *supra* note 4. My goal is to help expose the unexposed; in a sense, to help us see the fishbowl.

INTRODUCTION

Increasingly in the twentieth century, the modernist notion of the self as unitary, stable, and transparent has come under criticism. Although rumblings of dissension have been building for more than 200 years, the advent of postmodernism in general, and the insightful criticism of feminist thinkers in particular, have sounded the death knell for this concept of the self.⁶ By positing a contrasting antiessentialist, intersectional self, Trina Grillo and her contemporaries (such as Angela Harris, Kimberlé Crenshaw, and Patricia Williams) have made great strides in pushing the dialogue on identity and the subject beyond those traditional concepts (including early feminist renditions) that have functioned to marginalize and subjugate oppressed groups. This rejection of the unitary modernist self has in turn led to vast and fundamental criticisms of our legal system, which is predicated on the individual, autonomous self. These criticisms assert that, by grounding legal doctrines on a conception of the self or subject that at best only describes the White male, our legal system has consistently functioned to create and perpetuate the privilege of White males.⁷

At the base of the criticisms of Grillo and other feminists is the reformulation of the self as a site constituted and fragmented, at least partially, by the intersections of various categories of domination/oppression such as race, gender, and sexual orientation.⁸ Thus, far from being a unitary and static phenomenon untainted by experience, one's core identity is made up of the various discourses and structures that shape society and one's experience within it. Many feminists and postmodernists have taken this argument one step further and asserted that the self is by its very nature fragmented: an illu-

6. As a linguistic convenience, this Essay will use the overly general terms "feminism" and "postmodernism." In doing so, my intent is not to assert that there is a single voice or vantage point for either of these categories, or that these categories are in any way mutually exclusive. Instead, I wish only to avoid being paralyzed by the task of articulating the infinite nuances and wrinkles that exist within and among them.

7. See *infra* Part IV (reviewing criticisms of the modern conception of the legal subject and arguing that this conception serves to perpetuate White male privilege).

8. See, e.g., Trina Grillo, *Antiessentialism and Intersectionality: Tools to Dismantle the Master's House*, 10 BERKELEY WOMEN'S L.J. 16, 17-19 (1995) (describing the intersectionality critique). This conception of the self will be presented in greater detail in Part II *infra*.

sory notion constructed as static and unitary, but in reality completely fluid.⁹

Building upon theories of feminism and postmodernism, this Essay will attempt to advance the dialogue of the self by addressing some problems that have proceeded from the deconstruction and decentering of the Western self. The tensions between modernism and postmodernism are often framed in terms of essentialism and antiessentialism. Feminism in general, and the intersectional thesis in particular, have been ambivalent on this essentialist/antiessentialist issue. I examine some of the issues concerning this debate and try to expose some of the limitations of each position. I also try to demonstrate how the positions often rely on a shared historical and conceptual tradition that does not exhaust useful ways of examining this issue and the self. Drawing on a reconceptualization of the intersectional thesis, I try to show that resolving the essentialist/antiessentialist debate is not a mandatory precondition for accepting intersectionalism's claim of a decentered nonunitary self. Finally, I try to suggest some of the legal implications of an intersectional nonunitary self.

The essential, unitary, and static self has come under serious attack. This critique leaves the self decentered, fractured and possibly multiple. This attack does not, however, mandate that there is no essential self.¹⁰ Such a conclusion falls prey to a kind of reasoning that Richard Bernstein has referred to as the "grand and seductive Either/Or."¹¹ Although antiessentialists may ultimately be right, I think that it is incorrect to assert that either the self possesses the Western liberal essence

9. See, e.g., Katherine P. Ewing, *The Illusion of Wholeness: Culture, Self, and the Experience of Inconsistency*, 18 *ETHOS* 251, 251 (1990) (arguing that people "project multiple, inconsistent self-representations that are context-dependent and may shift rapidly"); Angela P. Harris, *Foreword: The Unbearable Lightness of Identity*, 11 *BERKELEY WOMEN'S L.J.* 207, 211 (1996) (arguing that the problem with any general theory of identity "is that 'identity itself has little substance'"); Jennifer Wicke, *Postmodern Identity and the Legal Subject*, 62 *U. COLO. L. REV.* 455, 463 (1991) (noting that a postmodern conception of identity recognizes the self as fragmented and captures "its fissuring by the myriad social discourses which construct it").

10. The attack on the essential self is part of a larger anti-foundationalism that challenges the notion that there is anything that is essential. It is also part of a tradition started by liberalism that denies that there is such a thing as intelligible essence. See generally ROBERTO MANGABEIRA UNGER, *KNOWLEDGE AND POLITICS* (1984).

11. RICHARD J. BERNSTEIN, *BEYOND OBJECTIVISM AND RELATIVISM: SCIENCE, HERMENEUTICS, AND PRAXIS* 18 (1983).

or it possesses no essence whatsoever; multiplicity and essentialism are not mutually exclusive.¹²

There are a number of presentations that share with post-modernists and feminists the assertion that the self is constructed and fractured, but do not share the claim that all is constructed, leaving nothing essential or unconditional. Although these presentations are numerous, this Essay will focus upon two in particular: the psychoanalytic self, and the Buddhist theory of the self and the uncondition.¹³ My goal is not to advocate any particular notion of identity. Rather, I intend to show that there is a general consensus among those who think critically about the self that the modernist self—that is, the Western, unitary, autonomous self—is simply wrong. Furthermore, while there is an intense debate about the nature of the self that should replace the early commentaries, resolving this debate is not critical in addressing some implications of how we construct and use the law. I want to emphasize the need for caution in how we operate within the discursive void left by the demise of the modern self.

From a jurisprudential standpoint, the implications of rejecting the unitary self are immense and pervasive. While it is impossible to know the myriad ways in which this rejection will impact the law, it is certain that the implications will go to the law's very foundations. In this Essay I briefly sketch out some of the legal ramifications of the multiple self, particularly in relation to how the law approaches racism. Part I provides an overview of the origins and conception of the Western self. Part II focuses upon various challenges to the modern self, including the intersectional self that has been advanced by Grillo, Harris, Williams, and Crenshaw. Part III presents the Freudian and Buddhist conceptions of the self and no self. These concepts of the self share the postmodern position that the self is not unitary, while adopting different positions on the strong antiessentialism of postmodernism. I will show how they attempt to avoid some of the flaws of modernism regard-

12. Nietzsche was one of the first Western philosophers to claim that the self is constructed, multiple, and yet, in part, essential nonetheless. See FRIEDRICH NIETZSCHE, *UNTIMELY MEDITATIONS* 76 (R.J. Hollingdale trans., Cambridge Univ. Press 1983) (arguing that in constructing a self we cannot banish history or inheritance, but must instead "confront our inherited and hereditary nature with our knowledge of it").

13. Again I must acknowledge that these terms are overly broad. Psychoanalysts and Buddhists have posited many different versions of the self.

ing the self. Finally, Part IV addresses some of the legal implications of the move toward a multiple self.

I. THE MODERN SELF

Before the Renaissance, Western society defined the self by its location within both a "secular and divine order."¹⁴ The center of pre-modern epistemology was "the great chain of being," in which all members of society had a proper place.¹⁵ With the rise of Renaissance humanism and the Enlightenment, however, the individual began to be conceived as sovereign and epistemologically central.¹⁶ This reconfiguration of the self, spurred by historical events such as the Protestant Reformation and the scientific revolution,¹⁷ ultimately led to the systematic examination of the modern self. Although many participated, four of the more influential theorists were Immanuel Kant, Rene Descartes, John Locke, and more recently, John Rawls.

Kant asserted that the definitive characteristic of the human self was its capacity for reason. Reason allowed the self to understand and order the world with certainty. According to Kant, "[R]eason is the faculty which supplies the principles of *a priori* knowledge,"¹⁸ and "pure *a priori* principles are indispensable for the possibility of experience, . . . [f]or whence could

14. Stuart Hall, *The Question of Cultural Identity*, in MODERNITY AND ITS FUTURES 595, 602 (Stuart Hall et al. eds., 1992).

15. *Id.*

16. *Id.* at 602-03. It bears mentioning that, although this notion of the sovereign and essential self had important implications for the liberation of those oppressed by pre-modern society, many of the principle proponents of this self felt that it only inhered in White Europeans. For example, David Hume asserted that "negroes" were akin to parrots in their intellectual capacities, only capable of mimicry; similarly Immanuel Kant felt that Blacks were intellectually inferior, and John Stuart Mill believed that Blacks lacked the capacity for self-government. DAVID THEO GOLDBERG, RACIST CULTURE: PHILOSOPHY AND THE POLITICS OF MEANING 6 (1993).

17. Given that the discoveries of the scientific revolution fueled the modernist belief that man could order reality, it is interesting to note that many of the fundamental "truths" of the scientific revolution are now considered incorrect. For example, the linearity of time, one of the so-called "dimensions" of reality, is now in disrepute as linear concepts of time create "boundaries that breed contradictions in the laws of science." William V. Dunning, *Post-Modernism and the Construct of the Divisible Self*, 33 BRIT. J. AESTHETICS 132, 135 (1993) (describing Stephen Hawking's avoidance of a linear concept of time).

18. IMMANUEL KANT, CRITIQUE OF PURE REASON 58 (Norman Kemp Smith trans., St. Martin's Press 1968).

experience derive its certainty, if all the rules, according to which it proceeds, were always themselves empirical, and therefore contingent?"¹⁹ Defining humans by their capacity for *a priori* reasoning reveals that the essence of the Kantian self is individual and imperviousness to experience (i.e., static). Kant deduced further that this self he envisioned was unitary:

The thought that the representations given in intuition one in all belong to me, is therefore equivalent to the thought that I unite them in one self-consciousness, or can at least so unite them; . . . For otherwise I should have as many-coloured and diverse a self as I have representations of which I am conscious to myself.²⁰

Proceeding from the notion of a unitary self or self-consciousness²¹ governed by a capacity for reason that is unaffected by the particularities of experience, Kant felt that "pure reason" both enabled and compelled humans to construct a "transcendental philosophy" that articulated the structure and order of the experiential world.²²

A predecessor of Kant, Descartes viewed the self in much the same fashion as Kant. He too felt that the capacity for reason was the definitive characteristic of the human self: "[A]s to reason or sense, . . . it is that alone which constitutes us men."²³ Furthermore, Descartes saw this essential characteristic of man as "by nature equal in all men."²⁴ Thus, all differences among humans were trivial, because "the difference of greater and less holds only among the *accidents*, and not among the *forms* or *natures* of *individuals* of the same *species*."²⁵ Like Kant, Descartes believed that reason contained the capacity for knowing and ordering the world. He constructed his epistemology upon the foundation of his

19. *Id.* at 45.

20. *Id.* at 154. It is interesting to note that here Kant considers and quickly dismisses the notion of a multiple self as inconceivable.

21. There is a subtle difference between the notion of the self and the notion of self-consciousness. It is a difference that is not always recognized and attended to in liberalism. Indeed, it was Descartes's epistemology that asserted that self-consciousness was proof of a self. See *infra* notes 23-26 and accompanying text (quoting Descartes).

22. See KANT, *supra* note 18, at 60 (explaining that "[t]ranscendental philosophy is only the idea of a science, for which the critique of pure reason has to lay down the complete architectonic plan").

23. RENE DESCARTES, A DISCOURSE ON METHOD AND SELECTED WRITINGS 2 (John Veitch trans., E.P. Dutton & Co. 1951).

24. *Id.* at 1.

25. *Id.* at 2.

awareness of his own existence via the maxim, "*Cogito ergo sum.*"²⁶

Locke shared with Kant and Descartes the belief that humans were essentially individualistic and defined by their capacity for reason.²⁷ Moreover, Locke posited that society ought to be ordered along the lines of a social contract. All men, by virtue of their reason, would assent to this contract insofar as it governed social relations in a manner that enabled men to most freely pursue their individual ends.²⁸

John Rawls, a late modern theorist, provides an explicit example of this social contract theory in practice.²⁹ Proceeding from the modern conception of the self as essentially autonomous and *a priori*, Rawls endeavored to articulate a process for ordering a just society.³⁰ The key to this process was the notion of the "original position," a position where individuals could consider principles of justice in their bare essence, without the benefit or detriment of bias acquired through awareness of social constructions.³¹ From this hypothetical position, Rawls believed that one could ascertain those principles that are most fair for ordering society because the principles would be created without regard to any "arbitrary contingencies."³² Rawls

26. Translated, "I think therefore I am." RENE DESCARTES, DISCOURSE ON THE METHOD OF RIGHTLY CONDUCTING THE REASON AND SEEKING FOR TRUTH IN THE SCIENCES 21 (David Weissman ed., 1996).

27. See JOHN LOCKE, AN ESSAY CONCERNING HUMAN UNDERSTANDING 9 (A.S. Pringle-Pattison ed., Humanities Press 1978) (explaining that "it is the understanding that sets man above the rest of sensible beings").

28. Locke was also a theist whose humanism led him to conclude that "the law of nature stands as an eternal rule to all men, . . . and the fundamental law of nature being the preservation of mankind, no human sanction can be good or valid against it." JOHN LOCKE, TREATISE OF CIVIL GOVERNMENT 90 (C.L. Sherman ed., 1937).

29. See JOHN RAWLS, A THEORY OF JUSTICE (1971).

30. Rawls's theory tries to avoid the philosophical question of the nature of the self. He does this by trying to maintain a neutral position on the ontological question, and instead attempts to advance a political theory that would accommodate various notions of the self. *Id.* at 18-19. His critics claim that Rawls, like Kant before him, fails in this effort. See MICHAEL J. SANDEL, LIBERALISM AND THE LIMITS OF JUSTICE 11 (1982) (arguing that while Rawls envisions the principles of justice as emerging from deliberations, no real deliberation would be possible where the parties have no basis for disagreement); see also SEYLA BENHABIB, SITUATING THE SELF: GENDER, COMMUNITY, AND POSTMODERNISM 161-69 (1992).

31. RAWLS, *supra* note 29, at 141. The assumption Rawls makes is that "[i]f a knowledge of particulars is allowed, then the outcome is biased by arbitrary contingencies." *Id.*

32. *Id.*

referred to this exercise as a collective one. Nevertheless, Michael Sandel notes that if one accepts the premise that humans are essentially autonomous and rational as unaffected by experience, then the proper ordering of society is really univocal and solitary.³³ Thus, in Rawls we see the basis for the modern jurisprudential ideal that the law proceeds from fundamental truths about the essence of humans, and need not—in fact, ought not—take account of the particularities of various individuals.³⁴ It is this view of the self that places individual rights ahead of societal good in deontological liberalism.³⁵

Although the modern conception of the self aspires to a universality independent of experience, it is at least in part a response to an earlier socio-historical conception of the self.³⁶ Moreover, even as these universal claims regarding the self were defining the modern era, they were subject to critique. For example, David Hume argued that the self was nonexistent, an imaginary referent that we construct in an attempt to order the incessant stream of sensations we experience:

But self or person is not any one impression, but that to which our several impressions and ideas are suppos'd to have a reference. If any impression gives rise to the idea of self, that impression must continue invariably the same, thro' the whole course of our lives; since self is supposed to exist after that manner. But there is no impression constant and invariable.³⁷

Furthermore, Hume maintained that this illusion of the self was only made possible by certain artifices of the mind: "Tis, therefore, on some of these three relations of resemblance, contiguity and causation, that identity depends; . . . our notions of personal identity proceed entirely from the smooth and uninterrupted progress of the thought along a train of connected ideas, according to the principles."³⁸

33. SANDEL, *supra* note 30, at 129.

34. See *infra* Part IV (discussing the impact of the modern self on the law).

35. See RAWLS, *supra* note 29, at 3-4 (arguing that in a just society "[e]ach person possesses an inviolability founded on justice that even the welfare of society as a whole cannot override"); SANDEL, *supra* note 30, at 2-7 (arguing that the concepts of self as independent of its object and of the right as prior to the good are essential to the deontological vision).

36. See *supra* notes 10-12 and accompanying text (discussing modern theories of self).

37. DAVID HUME, A TREATISE OF HUMAN NATURE 251 (L.A. Selby-Bigge ed., 1888).

38. *Id.* at 260. Hume felt that the memory actually *produced* identity by linking sensations that resembled one another. *Id.* at 260-61. Similarly, cau-

Building on the skepticism of Hume, Georg Hegel made some important criticisms of the Western self. In contrast to the universal notions of reason proffered by Kant, Descartes, and Locke, Hegel was the first philosopher of the modern period to suggest that reason and identity are not transcendental, but instead need to be viewed in a historical context.³⁹ Because Hegel contextualized reason, one commentator has described him as an "idealist" who "does not understand human character or identity to be some fixed, immutable 'reality,' but rather conceives of human beings as actively producing their character and identity in history."⁴⁰ The implications of Hegel's criticism of the universality of reason are profound. Because reason was not only the essence of man, but also the primary tool that enabled man to understand and order the experiential world, the conclusion that reason is relative inherently undermines modern conceptions of the world as objectively ordered and knowable. In other words, the modern project of "self-making" provided the analytical premise for its project of "world-making." If we reject the self as possessive of universal reason, then we must also reject those insights regarding the larger world that reason supposedly allows.

II. VOICES OF DISSENT

The development of the ideology of individualism has very negative consequences. As the modern essentialist conception of individuals informed governmental and jurisprudential theory, there was a concurrent need to construct an ideology to justify certain practices, such as slavery and colonialism, which clearly violated norms emanating from an equal and essential self. Yet the very manner in which modernists defined the self justified those practices. By construing the essence of the human self as individual and autonomous, European thinkers deliberately excluded from selfhood members of non-White societies that were organized around non-individualistic norms.⁴¹

sation created a sense of identity in subjects and objects by ordering sensations, and "[a]s memory alone acquaints us with the continuance and extent of this succession of perceptions, 'tis to be consider'd upon that account chiefly, as the source of personal identity." *Id.* at 261.

39. GEORG W.F. HEGEL, *REASON IN HISTORY: A GENERAL INTRODUCTION TO THE PHILOSOPHY OF HISTORY* 31-34 (Robert S. Hartman trans., 1953).

40. LEWIS P. HINCHMAN, *HEGEL'S CRITIQUE OF THE ENLIGHTENMENT* 33 (1984).

41. GOLDBERG, *supra* note 16, at 44; see also john a. powell, *The "Racing" of American Society: Race Functioning as a Verb Before Signifying as a Noun*,

Similarly, the adherence of modernists to Christian beliefs⁴² also justified the conquest and subjugation of non-Christian (i.e., non-White) "infidels."⁴³ Other complementary ideologies have been employed as needed to provide scientific (e.g., eugenics⁴⁴ and polygenics⁴⁵) and, more recently, cultural (e.g., the "culture of poverty"⁴⁶) explanations for the inequalities of Western society.

Given the exclusively defined "essence" of identity, it is not surprising that criticisms of the Western self have arisen mainly from the groups that Western society has marginalized. Writing at the beginning of the twentieth century, W.E.B. DuBois articulated his anguish as an African American trying to attain a sense of self-unity in a society that defined him in ways that contradicted his own sense of identity:

[T]he Negro is a sort of seventh son, born with a veil, and gifted with second-sight in this American world,—a world which yields him no true self-consciousness, but only lets him see himself through the revelation of the other world. It is a peculiar sensation, this double-consciousness, this sense of always looking at one's self through the eyes of others, One ever feels his two-ness The history of the American Negro is the history of this strife,—this longing to attain self-conscious manhood, to merge his double self into a better and truer self.⁴⁷

DuBois's reflections suggest the postmodern, intersectional self, the self of "others" fragmented by society's dominant discourse.⁴⁸ Importantly, DuBois demonstrates that those people

15 LAW & INEQ. J. 99, 110 (1997) (noting that European exaltation of the individual was adopted in part to distinguish White Europeans from non-White peoples organized around nonindividualistic norms).

42. In the epistemologies of modern philosophers, Christian conceptions of God played a central role. See, e.g., RENE DESCARTES, *Meditations*, in I PHILOSOPHICAL WORKS OF DESCARTES 197-99 (E.S. Haldane & G.R.T. Ross trans., 1967).

43. GOLDBERG, *supra* note 16, at 16.

44. *Id.* at 55-56.

45. *Id.* at 33-34.

46. See, e.g., John O. Calmore, *Racialized Space and the Culture of Segregation: "Hewing a Stone of Hope from a Mountain of Despair,"* 143 U. PA. L. REV. 1233, 1243-44 (1995) (noting characterizations of the inner city and the culture of poverty); Kimberlé Williams Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Anti-Discrimination Law*, 101 HARV. L. REV. 1331, 1379 (1988) (stating that assumptions of cultural inferiority have replaced claims of racial inferiority).

47. W.E.B. DU BOIS, *THE SOULS OF BLACK FOLK* 8-9 (1995).

48. As James Boyle notes, there is a tension in writings on the self between the role of structure (or context) in defining the self and the agency or ability of the individual to self-define. James Boyle, *Is Subjectivity Possible? The Postmodern Subject in Legal Theory*, 62 U. COLO. L. REV. 489, 492 (1991).

whom society has marginalized and dehumanized do not experience the unitary self as an essence, but as an aspiration; a "longing" for coherence and self-satisfaction.⁴⁹

Zora Neale Hurston's reflections on her sense of self also question the idea of a unitary and static self. Hurston recounts how her experience of possessing a racialized identity was not an essential one, but rather was largely a product of her placement within a societal framework:

I remember the very day that I became colored. Up to my thirteenth year I lived in the little Negro town of Eatonville, Florida . . . [Then] I was sent to school in Jacksonville. I left Eatonville, the town of the oleanders, as Zora. When I disembarked from the river-boat at Jacksonville she was no more . . . I was now a little colored girl.⁵⁰

This reflection demonstrates that Hurston did not experience her self as unitary—she was both "Zora" and a nameless "little colored girl."⁵¹ Nor was Hurston's sense of self static. Experience created her identity, which changed as her context changed. Concerning her sense of a racial identity, Hurston wrote, "I feel most colored when I am thrown up against a sharp white background."⁵²

In this White context we can envision both DuBois and Hurston grappling with the reconciliation of their own senses of self with the foreign subhuman notion of self thrust upon them. Frantz Fanon, writing about colonizer and colonized, articulates this conundrum of identity that the modern self creates for marginalized groups: "Because it is a systematic negation of the other person and a furious determination to deny the other person all attributes of humanity, colonialism

My belief is that both of these forces tell part of the story and that they are not mutually exclusive, but instead mutually limiting.

49. As I will argue later in the Essay, this is an unattainable ideal. See *infra* text accompanying note 144. The unitary self is an illusion that the dominant White male is able to maintain because of his central situating in modern discourse.

50. Zora Neale Hurston, *How It Feels to be Colored Me*, in *I LOVE MYSELF WHEN I AM LAUGHING* 152-53 (Alice Walker ed., 1979).

51. Hurston's fiction also reflects this notion of a discordance between self-perception and one's identity as construed by the dominant discourse. In *Their Eyes Were Watching God*, Janie, the protagonist, at age six makes the following remarks upon viewing a photograph of herself for the first time:

So when we looked at de picture and everybody got pointed out there wasn't nobody left except a real dark little girl with long hair standing by Eleanor. Dat's where Ah was s'posed to be, but Ah couldn't recognize dat dark chile as me. So Ah ast, "where is me? Ah don't see me."

ZORA NEALE HURSTON, *THEIR EYES WERE WATCHING GOD* 9 (1937).

52. Hurston, *supra* note 50, at 154.

forces the people it dominates to ask themselves the question constantly: 'In reality, who am I?'"⁵³

Hurston's metaphor of the white background also illustrates how it is that White males may not have a similar experience of fragmented identities. Against a white background—within a theoretical framework that defines them as coherent and human—individual whites are free to choose the manner in which they distinguish themselves. Confident that those aspects they find most central to their identity are legitimate, White males are free to cultivate their "arbitrary contingencies" with little fear of loss of humanity.⁵⁴ There is no dissonance between Whites' personal experiences of humanity and societal definitions of humanity. Thus, the smooth fit between societal norms of Whiteness and the constructed identity of Whites creates an illusion of coherence and racial invisibility or neutrality—of "normality."⁵⁵ By attaining this sense of racial neutrality, White males are thus able to adhere to notions of the essentialized modern self without problematizing their own sense of identity.

The false unity and transparency of Whiteness and maleness leave those who are not White males futilely seeking the sense of unity they perceive in a White male self that is in reality neither unitary nor transparent. For example, like Dubois, Fanon expresses the view that it is the experience of racial subjugation that fractures the self of the colonized: "I am being dissected under white eyes [that] objectively cut away slices of my reality."⁵⁶ Thus the pull to be an individual, especially by Blacks and other "others," is an effort to claim one's humanity by not being marked by race, gender, etc. It is an effort to become, or pass for, the White male. In a subtle way this error of normalizing the unstated marker of the dominant discourse shadows some of the language of intersectionality.

53. FRANTZ FANON, *THE WRETCHED OF THE EARTH* 250 (1963).

54. This is provided, of course, that they do not transgress other constructed borders such as those of gender and sexuality.

55. What this invisibility masks is the myriad ways in which Whiteness has been defined and redefined in order to maintain the privileged status of Whites. In fact, given the scientific unreality of race, one can argue that to be White mostly means to be privileged. See generally powell, *supra* note 41, at 120-24 (discussing Whiteness as actually signifying privilege).

56. FRANTZ FANON, *BLACK SKIN, WHITE MASKS* 116 (Charles L. Markmann trans., 1967). Elsewhere Fanon writes, "As long as the black man is among his own, he will have no occasion, except in minor internal conflicts, to experience his being through others." *Id.* at 109.

A. THE INTERSECTIONAL SELF

Contemporary feminist theorists have made a significant contribution to the rejection of the modern unitary self by asserting that if such a separate and autonomous self exists, it is certainly not the female self.⁵⁷ Instead, they propose an alternative description of the female self. Early attempts, by White feminists in particular, at creating a separate theory of the self, however, fell prey to the same essentialist problems inherent in the modern self.⁵⁸ As the critical race theorists noted, description of the male and the female could more accurately be described as White male and female. By accepting the prevailing concept of the unitary, autonomous self as applied to White males, and supplementing it with an essentialist female foil, early White feminists replicated the exclusionary tendencies of the modern self.⁵⁹ These White feminists were aware of the problem but misunderstood its nature. They assumed that to really deal with sexism one should look at the experiences of White women "unmodified" by race.⁶⁰ They failed to see that White is as much of a racial modifier as Black. Thus, they assumed that Black women's experiences and ontological space could be captured by adding the "race" and "gender" categories together. As Angela Harris notes, this new framework "reduce[d] the lives of people who experience multiple forms of oppression to addition problems: 'racism + sexism = straight black woman's experience,' or 'racism + sexism + homophobia = black lesbian experience.'"⁶¹

Some White feminist theorists thought that the essential female perspective was best articulated by White women whose

57. See generally MARILYN FRENCH, *BEYOND POWER: ON WOMEN, MEN, AND MORALS* 482-83 (1985); CAROL GILLIGAN, *IN A DIFFERENT VOICE: PSYCHOLOGICAL THEORY AND WOMEN'S DEVELOPMENT* 6-8 (1982); Robin West, *Jurisprudence and Gender*, 55 U. CHI. L. REV. 1, 1-3 (1988).

58. See, e.g., Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 590-605 (1990) (critiquing Catharine MacKinnon's dominance theory and Robin West's "essential woman" theory).

59. Put another way, early feminists offered a very modern conception of the female self by acceding to Western society's demand for total, not partial, explanations. Donna Haraway, *A Manifesto for Cyborgs: Science, Technology, and Socialist Feminism in the 1980s*, in *FEMINISM/POSTMODERNISM* 190, 202 (Linda J. Nicholson ed., 1990).

60. See, e.g., Catharine A. MacKinnon, *FEMINISM UNMODIFIED: DISCOURSE ON LIFE AND LAW* 16 (1987) (arguing that feminism must be "unqualified by pre-existing modifiers").

61. Harris, *supra* note 58, at 588.

experiences as women were somehow equivalent to the Black female experience distilled of race. To extend the mathematical metaphor, in White women, these early feminists felt that they could "isolate" the variable of sexism from the variable of racism, and so better understand it. Similarly, the paradigmatic racial experience became that of the minority male, whose experiences of racism were isolated from sexism.⁶² Using this theoretical framework it was possible to construct the experience of minority women without even considering them. Hence, this conceptualization of the female self functioned to exclude, rather than include, all but the "typical" White female.⁶³

In reaction to this flawed analysis, several minority feminist thinkers proposed the theory of the intersectional self. The basic tenet of intersectionality is that "women of color stand at the intersection of the categories of race and gender, and that their experiences are not simply that of racial oppression plus gender oppression."⁶⁴ These systems of oppression combine in symbiotic ways to create unique experiences. Furthermore, because all categories exist in relation to other categories (i.e., "Black" exists in relation to "White"), the intersectional self is descriptive of all individuals, not only those victimized by multiple systems of oppression.⁶⁵ Thus, intersectionality subverts the notion of the modern self. Instead, it states that "we are not born with a 'self,' but rather are composed of a welter of partial, sometimes contradictory, or even antithetical 'selves.'"⁶⁶ The significance of each of these fragmented "selves" for one's sense of identity shifts as a result of both external and internal stimulus and experience.⁶⁷ Thus

62. An anthology on Black women's studies makes this phenomenon explicit in its title: *ALL THE WOMEN ARE WHITE, ALL THE BLACKS ARE MEN, BUT SOME OF US ARE BRAVE* (Gloria Hull et al. eds., 1982)).

63. As will be discussed in greater detail later, this essentialized conception of discrimination also informed the manner in which the law addressed racism and sexism. See *infra* Part IV.

64. Grillo, *supra* note 8, at 18. Kimberlé Crenshaw provides a very explicit account of how the minority woman's experience of intersectionality creates unique difficulties and contradictions in the legal and political spheres. Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241 (1993).

65. Harris, *supra* note 9, at 210.

66. Harris, *supra* note 58, at 584.

67. Grillo, *supra* note 8, at 17.

the importance of race for Zora Neale Hurston's own sense of identity depended on her environment.⁶⁸

B. OTHER POSTMODERN REFLECTIONS ON THE SELF

Many postmodern and late modern theories of the self echo the assertions of the intersectionality critique, and assert that the self is fractured and multiple. For example, Katherine Ewing describes how some anthropologists have undergone a similar shift away from an essentialist or unitary self. She writes that anthropologists have typically viewed the self through a unitary Eurocentric lens as "a symbol or cluster of symbols that they identify in their writing as a culture's characteristic concept of self or person which they contrast with *the* Western concept of self."⁶⁹ In contrast, Ewing notes, several "[r]ecent studies by anthropologists of the 'self' are grounded in a relativist paradigm which, if not altogether denying the existence of universals in human experience, is intended to demonstrate that there is much less that is universal than we might have supposed."⁷⁰

Ewing posits that "in all cultures people can be observed to project multiple, inconsistent self-representations that are context-dependent and may shift rapidly."⁷¹ According to Ewing, it is these individual self-representations that create the illusory sense of wholeness that people perceive. She states that "[p]eople construct a series of self-representations that are based on selected cultural concepts of persons and selected 'chains' of personal memories. Each self-concept is experienced as whole and continuous, with its own history and memories that emerge in a specific context."⁷² Furthermore, challenges to the individual's sense of wholeness are a challenge to our "integrative capacities,"⁷³ testing our ability to preserve the illusion of wholeness through synthesis and integration.⁷⁴ Applying this framework to the experiences of marginalized groups, the fragmentation felt by "others" arguably results

68. See *supra* notes 50-52 and accompanying text (noting Hurston's sense of racial identity).

69. Ewing, *supra* note 9, at 251.

70. *Id.* at 255.

71. *Id.* at 251.

72. *Id.* at 253.

73. *Id.* at 270.

74. *Id.* at 270-71.

from the difficult task of integrating the dominant discourse to individual experience.

Other postmodernists have also expressed similar views on the self. For instance, consistent with intersectionality's assertion "that 'identity itself' has little substance,"⁷⁵ Donna Haraway "skips the step of original unity"⁷⁶ and states that "there is nothing about being 'female' that naturally binds women."⁷⁷ Gender is constructed and is thus an "artificial" determinant of identity. Postmodernists also tend to agree with the notion of the self as relational and fluid—dependent upon the context in which it exists. Susan Stanford Friedman offers an analysis of the self akin to the intersectional critique. She calls it the "script of relational positionality"⁷⁸ and defines it as: "[a] feminist analysis of identity as it is constituted at the crossroads of different systems of stratification . . . acknowledging how privilege and oppression are often not absolute categories but, rather, shift in relation to different axes of power and powerlessness."⁷⁹ Given the shifting crossroads each individual experiences, Friedman maintains that the self is constructed by a "multiplicity of fluid identities defined and acting situationally."⁸⁰

C. THE MULTI-RACIAL SELF

One insight of postmodernism that has very valuable implications for how we confront oppression is the notion of the self defined in relation to its context and its relation to other selves. Postmodernists advance a "new concept of identity, one which is never fixed or determined, but is forever shifting because it is generated by the individual's perception of the difference between himself or herself and others within a particular system."⁸¹ Given this fluidity and relationality, one's own sense of identity is inextricably entwined with, and dependent upon, the identity of "others." This recognition has led to a new way of understanding racial identity: the multi-racial self.⁸²

75. Harris, *supra* note 9, at 211.

76. Haraway, *supra* note 59, at 192.

77. *Id.* at 196-97.

78. Susan Stanford Friedman, *Beyond White and Other: Relationality and Narratives of Race in Feminist Discourse*, in *SIGNS* 1, 7 (1995).

79. *Id.*

80. *Id.* at 17.

81. Dunning, *supra* note 17, at 133.

82. This concept equally applies to gender, sexual orientation, and other

The power of this modern discourse has had fundamental ramifications for the construction of selves. Crenshaw describes how "racist ideology" arranges "oppositional categories in a hierarchical order; historically, whites represent[] the dominant antimony while Blacks came to be seen as separate and subordinate. . . . [E]ach traditional negative image of Blacks correlates with a counter-image of whites."⁸³ Harris notes that for "othered" groups the "experience of multiplicity is also a sense of self-contradiction, of containing the oppressor within oneself."⁸⁴ James Baldwin takes this insight a step further and asserts that the experience of the White male is similarly contradictory, if not similarly problematic: the White male self contains the oppressed within it.⁸⁵ Ruth Frankenberg similarly states that "White/European self-constitution is . . . fundamentally tied to the process of the discursive production of others, rather than preexisting that process."⁸⁶

In addition to its effects upon self-perception, the multi-racial self also has vast implications for how we understand racism and how the law should analyze and address it.⁸⁷ Toni Morrison, in *Playing in the Dark: Whiteness and the Literary Imagination*,⁸⁸ explores the ways in which the construction and invocation of the "Africanist" identity in White American literature has been central to the development of an American ethos. Morrison chronicles how the creation of the "New World" depended on Americans overcoming the ills of the "Old World." She observes that "[t]he desire for freedom is preceded by oppression; a yearning for God's law is born of the detestation of human license and corruption; the glamour of riches is in thrall to poverty, hunger, and debt."⁸⁹ Morrison contends

matrices of oppression. Haraway recognizes this when she refers to the "noninnocence of the category woman." Haraway, *supra* note 59, at 199. Amy Mullin makes a similar insight when she states: "Given that ours is still a racist, sexist, and homophobic society, it is easy to predict that self-mastery will become associated with mastery over people who are not white, as well as other women and homosexuals." Amy Mullin, *Selves, Diverse and Divided: Can Feminists Have Diversity Without Multiplicity?*, 10 HYPATIA 1, 7-8 (1995).

83. Crenshaw, *supra* note 46, at 1373.

84. Harris, *supra* note 58, at 608.

85. BALDWIN, *supra* note 1, at 690.

86. Ruth Frankenberg, *Whiteness and Americanness: Examining Constructions of Race, Culture, and Nation in White Women's Life Narratives*, in RACE 62, 63 (Steven Gregory & Roger Sanjek eds., 1994).

87. See *infra* Part IV.

88. MORRISON, *supra* note 5, at 34-38.

89. *Id.* at 34-35.

that European Americans constructed the racialized and polarized identity of Blacks as concrete proof of their transcending this oppression, corruption, and destitution, for "[n]othing highlighted freedom—if it did not in fact create it—like slavery."⁹⁰ For White American writers, this oppositional identity became a convenient and vital literary device: "[T]hrough the way writers peopled their work with the signs and bodies of this presence—one can see that a real or fabricated Africanist presence was crucial to their sense of Americanness,"⁹¹—that is, their sense of Whiteness.

III. THE LEAP TO ANTIESSENTIALISM

Despite the postmodern consensus that the self is multiple and relational rather than unitary and static, theorists have not paid enough attention to the internal functions of the multiple self—that is, to the issues of to what extent, and for what reason, the multiple parts are integrated or separated within the self. For example, structuralists tend to primatize the role of language and context in the structure of the self.⁹² As James Boyle demonstrates, however, this view is problematic in the way that it minimizes the role of individual choice and agency in individual development. He notes that "[t]he structuralist critiques portray the epistemology of subject and object as a *real* fantasy, that is to say, something which is already out there, which we need only to criticize. By doing so they ignore or minimize the act of choice"⁹³ This de-emphasis of agency is an understandable consequence of the rejection of the essentially autonomous and rational self. It manifests itself in an absence of discussion about *why* the self organizes experience in the manner that it does. For example, although Ewing explains in great detail the shifting, multiple functions of the individual, she does little to explore the internal impetus for these functions. Ewing asserts that "[t]hese selves are highly context-dependent and mutually inconsistent. There is no

90. *Id.* at 38.

91. *Id.* at 6.

92. See generally DALLYMAYR, *TWILIGHT OF SUBJECTIVITY* (1981) (discussing the role of language and context in the development of the self); FOUCAULT, *supra* note 3. Haraway, who identifies herself as materialist, places a similar primacy on the role of language and information systems and claims that the key to displacing the modern project "rests on a theory of language and controls." Haraway, *supra* note 59, at 206.

93. Boyle, *supra* note 48, at 500.

overarching, cohesive self that is identifiable to an outside observer."⁹⁴ She offers little, however, that might explain what it is about the self that leads to the construction of these multiple identities. Ewing also fails to address the tensions among differing self-conceptions, instead asserting that each distinct self-conception has its own set of memories that give it a sense of wholeness.⁹⁵ Although such fluidity of the self may at times be effortless and smooth, the painful experiences of multiplicity and self-contradiction typifying the narratives of subordinated groups make clear that this is not always the case. There is a direct interaction among the multiplicitous aspects of the self, and failing to recognize this interaction threatens a return to the essentialist "math problem" discussed earlier.⁹⁶

If we are to benefit from postmodern criticisms of the modern self, we must address the difficult questions relating to agency, and the seemingly integrated nature of the multiple self. It is also important to consider other conceptions of the self that retain some degree of essentialism. Amy Mullin cautions that "we need to speak with more clarity when we refer to selves as unified or divided. . . . [I]t is important to avoid assuming that effectively unified selves must be homogenous or integrated to the point that harmony is rarely threatened."⁹⁷ She criticizes the leap from a unitary to an entirely multiple and nonessential self⁹⁸ as overly quick and flawed by the modernist need for certainty that postmodernism purports to reject. According to Mullin:

[T]he understanding of the person as a composite of personlike parts expresses a conception of the person as ideally a harmonious integrated whole, a conception so powerful that, when the unity is not found at the level of the person as a whole, it is postulated of the "parts" of the person[, each] associated with a community that is seen as itself harmonious and unfissured. Hence while the impact of social relations on the formation and the personality of the self is acknowledged, it is also simplified and fixed once and for all.⁹⁹

Mullin advocates that, rather than presume that the self is either unitary or multiple, we instead develop "new ways of un-

94. Ewing, *supra* note 9, at 259 (citations omitted).

95. *Id.* at 268.

96. See *supra* note 61 and accompanying text (discussing Harris's mathematical formula).

97. Mullin, *supra* note 82, at 1-2.

98. Mullin describes the multiple self as the theory that the self is "composed of relatively fixed or agent-like aspects or parts." *Id.* at 2.

99. *Id.* at 8.

derstanding the unity of the empirical subject as a matter of the degree, pattern, and effectiveness of its organization."¹⁰⁰ A necessary corollary of this is that we "at least attempt to understand what shape[s] and continues to shape our preferences, fears and values."¹⁰¹

Mullin cautions us not to be overzealous in our move away from the modern self. Recognizing that the self is multiplicitous does not require the conclusion that there is no essence to the self. Given the ramifications of reconceptualizing the self, we must consider whether there is some viable alternative to the modernist conception of the self that does not rest upon social construction. Although this endeavor may ultimately prove fruitless, it is a valuable one nevertheless. To this end, I briefly offer two conceptions of the self that recognizes its multiplicitous and constructed nature, while leaving room for an essentialist understanding of at least part of the process of consciousness: psychoanalysis and Buddhism.

A. THE PSYCHOANALYTIC SELF

Although people generally accept the notion that there are unconscious processes that affect our functionings, very few have used this insight to enhance understanding of the self and identity. Perhaps this can be explained by postmodernists' distrust of theories that attempt to provide universal explanations for the self. Ewing expresses this sentiment in her statement that "a single model of self or person is not adequate for describing how selves are experienced or represented in any culture."¹⁰² Nevertheless, she recognizes that the psychoanalytic (or "Freudian") self, though essential in some respects, has descriptive capabilities that are not necessarily inconsistent with the notion of a multiple and relational self. She claims that "[t]he phenomenon to which the psychoanalysts are alluding when they speak of a cohesive self—that is, the experience of wholeness that derives from a symbolic constitution of the self and the phenomenon of rapid shifts in the content of that experience—may be universal."¹⁰³ Given that psycho-

100. *Id.* at 20.

101. *Id.* at 17.

102. Ewing, *supra* note 9, at 257.

103. *Id.* at 274. Others have not been so accepting of psychoanalysis. For example, Jane Flax criticizes Freudian theory on the ground that it "assumes that individual humans all share an essence with a common developmental pattern and that this pattern is or should be rational, sequential, purposive

analysis offers some insight into the notion of a multiple and relational self, the theory should be considered.

Psychoanalysis focuses on "the individual in his capacity to generate a sense of 'I-ness' (subjectivity)."¹⁰⁴ According to Freud, this sense of unity is a function of the two basic facets of the mind, the conscious and the unconscious.¹⁰⁵ The conscious mind is generally logical and consists of those mental processes which we are aware of, while the unconscious mind consists of processes that escape our awareness but nevertheless shape identity and actions. The unconscious mind tackles the "desires, wishes, and instincts that strive for gratification."¹⁰⁶ Thus, Freud relocates the self from the conscious mind, where modernism places it, to somewhere in the interactions between the conscious and unconscious.¹⁰⁷ Because it consists of the interplay between the conscious and unconscious, the Freudian self is "fundamentally dialectic in nature."¹⁰⁸

According to Thomas Ogden, this interplay of the conscious and unconscious is a "[d]ialectic of [p]resence and [a]bsence."¹⁰⁹ In this interaction, what is present in conscious experience "is continually negated by that which it is not, while all the time alluding to what is lacking in itself."¹¹⁰ What is absent from the conscious mind's experience is often present in the unconscious mind, and the Freudian mind uses this dialectic to maintain a sense of wholeness and placidity. When there is tension between the (context-dependent) values of the conscious mind and incongruous thoughts or desires, the subject employs "[d]efensive mechanisms such as repression, denial,

and additive." Jane Flax, *Multiple: On the Contemporary Politics of Subjectivity*, 16 HUMAN STUDIES 33, 38 (1993). Flax goes on to assert that "[n]aturalizing and universalizing this developmental history obscures its fictive qualities and prescriptive purposes." *Id.*

104. THOMAS H. OGDEN, SUBJECTS OF ANALYSIS 14 (1994).

105. Others have embellished upon Freud's theories of internal functionings to posit much more radically situated selves. For example, Carl Jung maintained that the self was composed of a multitude of *daimons*, archetypal historical figures of varying genders, races, and even species that all functioned to constitute the individual self. JAMES HILLMON, HEALING FICTION 53-70 (1983).

106. Charles R. Lawrence III, *The Id, The Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 STAN. L. REV. 317, 331 (1987).

107. OGDEN, *supra* note 104, at 18 ("The subject for Freud is to be sought in the phenomenology corresponding to that which lies in the relations between the consciousness and unconsciousness.").

108. *Id.* at 7.

109. *Id.* at 20.

110. *Id.* at 21.

introjection, projection, reaction formation, sublimation, and reversal [which] resolve the conflicts between the primary and secondary processes by disguising forbidden wishes and making them palatable."¹¹¹

This dialectical process also has an intersubjective aspect: how we define ourselves and how we define others are interdependent functions of our interactions with others.¹¹² Psychoanalyst Melanie Klein asserts that the self is actually "decentered from its exclusive locus within the individual; instead the subject is conceived of as arising in a dialectic (a dialogue) of self and Other." Through the process of "projective identification," the subject is able to resolve internal conflicts by projecting those aspects of the conflict considered negative onto others:

Projective identification . . . is not simply an unconscious phantasy of projecting an aspect of oneself into the Other and controlling him from within; it represents a psychological-interpersonal event in which the projector, through actual interpersonal interaction with the recipient of the projective identification, exerts pressure on the Other to experience himself and behave in congruence with the omnipotent projective phantasy.¹¹³

Thus, the psychoanalytic subject is contextual and relational in at least two key respects: (1) the formation of the conscious self and its ethos, and (2) the stability of the subject as internal conflicts are resolved through the defensive mechanism of projection.

The Freudian account of the self is in many respects consistent with postmodernism's assertion that the self is relational and contextual. The conscious self is largely defined by social interactions. Consequently, it experiences incoherency and multiplicity as individuals in any sociohistorical context do. To this extent, psychoanalysis does not assert an *a priori* self in the manner that modernity does. Furthermore, the dialectical self of psychoanalysis offers an explanation of how the subject seeks to construct wholeness or unity out of multiplicity and how "others" play an integral role in this process.

111. Lawrence, *supra* note 106, at 331-32.

112. See OGDEN, *supra* note 104, at 63 (noting Ogden's conception of analytic intersubjectivity, which places central emphasis on its dialectical nature). Ogden uses the examples of infant and mother, and analyst and analysand, asserting that in these dialectical pairs the existence of one is dependent upon the existence of the other. *Id.* Psychoanalyst Melanie Klein asserts that the self is actually "decentered from its exclusive locus within the individual; instead the subject is conceived of as arising in a dialectic (a dialogue) of self and Other." *Id.* at 47.

113. *Id.* at 44.

Yet Freudian theorists believe that these processes of the mind, the interplay of the unconscious and conscious involving drives and instinct, exist in everyone.¹¹⁴

The Freudian theory of self provides valuable insight into the way that racism and other systems of oppression function in our society. The dialectic of consciousness and unconsciousness helps us to understand the persistence and pervasiveness of "unintentional" racism in our society despite the general disavowal of explicitly racist ideologies. In a society such as ours where racialized meanings are unavoidably pervasive, the ostensibly antiracist individual is consistently confronted with conflicts between its nonracist ethos and internalized racist attitudes. In order to resolve this conflict, the individual resorts to the aforementioned "defensive mechanisms":

[T]he human mind defends itself against the discomfort of guilt by denying or refusing to recognize those ideas, wishes, and beliefs that conflict with what the individual has learned is good or right. . . . When an individual experiences conflict between racist ideas and the societal ethic that condemns those ideas, the mind excludes his racism from consciousness.¹¹⁵

This helps to explain the pervasiveness of actions that contain racist meanings but are not driven by the actor's conscious "intent" to behave in a racist manner.¹¹⁶

Psychoanalysis may also provide useful insight into the multi-racial self discussed earlier.¹¹⁷ Through the process of projective identification, the subject is able to maintain a sense of self consistent with its value system by projecting those traits considered undesirable onto the Other. Charles Lawrence notes how the two prominent racially stereotyped narratives, that of the instinctive Other who is lazy, overly sexual,

114. Some have situated Freud between the romantic and the rationalist, or between the modern and the postmodern. ROBERT JAY LIFTON, *THE PROTEAN SELF: HUMAN RESILIENCE IN AN AGE OF FRAGMENTATION* 24 (1993).

115. Lawrence, *supra* note 106, at 322-23.

116. Lawrence illustrates this point by referring to the controversy created when sportscaster Howard Cosell referred to a Black football player as a "monkey." See *id.* at 339-40 (discussing the Cosell comment as an example of unconscious racism in everyday life). Accepting that Cosell was not racist in any willful respect and that he certainly could only be harmed by engaging in deliberately racist behavior, Lawrence notes the unmistakably racist undertones in Cosell's choice of metaphor. See *id.* at 340 (arguing that Cosell's "inadvertent slip of the tongue was not random . . . , [but] evidence of the continuing presence of a derogatory racial stereotype that he [had] repressed from consciousness and that [had] momentarily slipped past his Ego's censors").

117. See *supra* Part II.C (introducing the concept of the multi-racial self).

and out of control (e.g., Blacks), and the Other who is conniving, overly-ambitious and materialistic (e.g., Jews), correspond to two of the most common types of internal conflict: "that which arises when an individual cannot master his instinctive drives in a way that fits into rational and socially approved patterns of behavior, and that which arises when an individual cannot live up to the aspirations and standards of his own conscience."¹¹⁸

Because this psychoanalytic process involves the subject actively pressuring the Other to behave in a manner consistent with the projected trait,¹¹⁹ the success of projection in resolving an individual's conflict depends on his or her ability to control the Other. As our history of racism makes explicit, control is a key element of the racial project. In some respects then, the psychoanalytic account of the self is a useful and instructive alternative to the modern-postmodern debate about the self. If correct, psychoanalysis has fundamental implications for our current jurisprudence.¹²⁰

B. THE BUDDHIST SELF

Buddhism also offers a theory of subjectivity that is both essentialist and nonessentialist. A number of writers have suggested that postmodernism derives from and depends on modernism and that the very attempt to disprove modernism is based on modernist assumptions.¹²¹ This suggests that both modernism and postmodernism are conceptually and culturally related; they reflect a common, specific cultural and historical perspective. This insight also suggests that there may be ways of thinking and talking about issues of the self that do not fit within either the modernist or the postmodernist structure. If those two structures do not exhaust the possibilities, Buddhism may be an alternative structure. Anne Carolyn Klein makes clear that the current focus in the West upon the con-

118. Lawrence, *supra* note 106, at 333-34. This framework of analysis also provides insight into Toni Morrison's account of the role of Blacks in American literature and her assertion that slavery was a possibly indispensable corollary to the freedom of White Americans. See MORRISON, *supra* note 5, at 38.

119. Lawrence, *supra* note 106, at 333-34.

120. See *infra* Part IV.

121. See generally BENHABIB, *supra* note 30, at 2 (addressing "what is living and what is dead in universalist moral and political theories of the present, after their criticism in the hands of communitarians, feminists, and postmodernists"); BERNSTEIN, *supra* note 11, at 18-20.

structed nature of the self is in part caused by the failure to take seriously the interdependent nature of things that has always informed Buddhism:

From a Buddhist perspective, the contemporary fascination with the incoherent and incapturable multiplicities that construct self and knowledge suggests an intellectual history that never took sufficient note of the interdependent, constructed, and impermanent nature of things in the first place. Recognition of constructedness does not, for Buddhists, devalorize the unconstructed.¹²²

The conditional and the unconditional, the essential and the unessential, are not contradictory for Buddhism but are always present together.

One of the central tenets of Buddhism is that there is no permanent self.¹²³ Rather, Buddhists assert that the self and all phenomena are constructed and lack permanent inherent existence. This lack of inherent existence is also described as emptiness. Indeed, the emptiness of inherent existence means that the self and all phenomena are constructed and conditional—that is, put together and unessential. This emptiness of inherent existence is often referred to as the unconditional. But emptiness is not the opposite of, or separate from, phenomena; indeed, phenomena are both unconditioned and conditioned. As Klein notes, the unconditional and conditional co-exist and are compatible in Buddhist theory:

Middle Way Buddhist philosophy emphasizes what I call ontological nondualism, meaning that emptiness and dependent arisings are indivisible. In other words, the play of differences, the process of conditioning, is an insufficient description of how things are. Moreover, the conditioned and unconditioned can be experienced simultaneously because conditioned things and unconditioned emptiness are intrinsically compatible.¹²⁴

The self and all phenomena are put together, compounded, and conditional. While this process of constitution or construction occurs very rapidly, there are gaps nonetheless. In this sense, Buddhism supports structuralist, postmodern claims regarding the self by asserting that self-consciousness is largely put together by language.¹²⁵ This assertion of the nonessential self is more persuasive coming from Buddhism, because it is based on

122. ANNE CAROLYN KLEIN, *MEETING THE GREAT BLISS QUEEN: BUDDHISTS, FEMINISTS AND THE ART OF THE SELF* 140 (1995).

123. *Id.* at 127.

124. *Id.* at 136.

125. While Buddhists agree that self-consciousness is largely put together by language, they also believe that the process of self-consciousness starts at a pre-language level. *Id.* at 11.

a wholly separate tradition, rather than the reactive refutation of modernism.

Hume and others of the postmodern tradition have been compared to Buddhists,¹²⁶ but these comparisons often miss a critical difference. Buddhists' understanding of the nature of the self does not end at the level of social construction and mental artifices. As mentioned earlier, Buddhists believe that there is the unconditioned emptiness that is not put together or constituted. This uncondition is not a concept or a thing. Emptiness is also empty of inherent condition. Emptiness cannot be grasped directly by the language narrative because it is not part of the conceptual world. This does not mean that emptiness is beyond consciousness, but only that it is beyond *conceptual* consciousness. Emptiness can, however, be experienced directly through the practice of "mindfulness," which is the ability to sustain a calm, intense, and steady focus when one intends to do so.¹²⁷ Mindfulness involves accessing a state of consciousness that is beyond and ungoverned by experience and context. Thus, much of the Buddhist practice of sitting is directed towards gaining access to the place that is empty of concepts. One may ask whether this place, if we can even call it a place, is essential or unessential. The problem inherent in this question is that as soon as we ask it we are back in the realm of conceptual duality and not in the "unpatterned" space that is free of concepts.¹²⁸ Buddhists agree with postmod-

126. For example, neo-Buddhist Serge-Christophe Kolm describes the construction of the self in terms strikingly similar to those of Hume's referenced earlier:

One begins by acknowledging that a person is composed of several elements. The profane person would see this as a "decomposition" of the still perceptible person into several elements. One would then make him see that what he believed to be a person *is only* this set of elements that he stubbornly persisted in regarding as a whole . . .

Serge-Christophe Kolm, *The Buddhist Theory of "No-self,"* in *THE MULTIPLE SELF* 233, 255 (Jon Elster ed., 1985).

127. KLEIN, *supra* note 122, at 11.

128. It may be that the essentialism debate is analogous to the scientific debate over whether light is a wave or a particle. The possibilities that something is constructed either of particles or waves were considered mutually exclusive. So the question arises, is light made up of particles or is light made up of waves? It turns out that if the experiment designed to answer this question is set up to measure waves, then light is found to be a wave. Conversely, if the experiment is designed to measure particles, then light is found to be made up of particles. JEREMY M. HAYWARD, *SHIFTING WORLDS, CHANGING MINDS: WHERE THE SCIENCES AND BUDDHISM MEET* 18 (1987). Thus, the parameters of the question "What is light?" are found to be inconsis-

ernists that the world of language and concepts is constructed and unessential. Buddhists believe there is a consciousness that goes beyond concepts:

It is the claim of Buddhists that through the practice of meditation, the entire perceptual process can be brought into awareness, including the moment of the first split between "self" and world. The awareness that perceives this process, and the ground within which it arises, is not dependent on language and is not oriented toward a self; therefore it is known as "nonreferential awareness."¹²⁹

In asserting that there is an existence before and beyond concepts, Buddhism asserts that the individual, as distinguished from the individual's identity or self, "cannot be reduced to a 'site of competing discourses,' as it often is in feminist and other postmodern descriptions."¹³⁰

I must emphasize that my goal is not to resolve this question of essentialism and antiessentialism. I want instead to show how the question itself and the apparent answers are often products of a limited cultural discourse even when the aim is to critique the limits of the cultural discourse itself. Thus postmodernism may be an internal criticism of modernism because it adopts certain fundamental premises of the modern paradigm. My claim, then, is a modest one: there are strong reasons to believe that the self is not unitary, transparent, and stable in the way posited by early modernists. Further, there are many things that we believe in, including the unconscious, that strongly suggest that the self is at least fractured if not multiple. Accepting the self as fractured and/or multiple, however, does not compel a categorical adoption of the postmodern position.

Although I am not advocating an explicit acceptance of Buddhism, it is important to note that Buddhism has positive implications for personal and interpersonal interaction. Because Buddhism accepts the self as multiple and at times conflicting or contradictory, it "departs from the urge to master,

tent with the true nature of light. Light is composed of both waves and particles. Similarly, Buddhism asserts that the parameters of the essentialist/nonessentialist debate are flawed in that both "antinomes" are in part correct. Moreover, how we ask and verify the question does not just affect the answer we arrive at, but reality itself. Our questions and methods of observing the world participate in the world we are observing. Thus, the answer to the question, "Is there anything in the world essential or is everything unessential?" may be that it depends.

129. *Id.* at 132.

130. KLEIN, *supra* note 122, at 81.

override, rein in, or otherwise manipulate the self."¹³¹ Thus, it does not seek to construct a unitary, coherent sense of self. As Klein notes, this practice "of being nonjudgmental toward oneself has special significance in a culture where self-hatred is an issue."¹³² By being nonjudgmental, Buddhism also moves beyond the psychic tension that psychoanalysis believes is the source of projecting negative traits onto the "other." "When all the voices of the self are fully owned, they are less likely to be projected onto others. In this way, self-acceptance translates into acceptance of the other."¹³³ Thus, Buddhism requires, in establishing relations with oneself, that the mindful person "[have] models of self-engagement that do not denigrate or otherwise oppress."¹³⁴

IV. RECONSTITUTING THE LEGAL SUBJECT AND THE LAW

By rejecting the modern self, postmodernism strikes at the very foundation of modern jurisprudence, the legal subject. Consistent with modernism and social contract theory, the law is largely premised upon the notion of an *a priori* self whose "neutral" rights have priority over societal good. This self, however, is clearly a fallacy. In their criticism of Rawls's jurisprudential theory, Sandel and Boyle make clear that a transparent, nonparticularized legal subject is an impossibility.

Rawls premises his supposedly neutral theory of justice on the notion that there is an essence to humans that justice can serve by promulgating "principles that do not *themselves* presuppose any particular conception of the good."¹³⁵ Consequently, he asserts that these principles should be discovered by placing oneself behind a theoretical "veil of ignorance" that blinds the individual to the "outcome[s] of natural chance [and] the contingency of social circumstances."¹³⁶ However, postmodernism makes clear that what modernism posits as the essence of the self—that is, what aspects of identity Rawls and other modern thinkers would take behind the veil of ignorance with

131. *Id.* at 80.

132. *Id.* This insight applies with equal force to minorities and others whose senses of self are problematized by popular discourses.

133. *Id.* at 81.

134. *Id.* at 80.

135. SANDEL, *supra* note 30, at 1. See generally notes 29-35 and accompanying text (discussing Rawls's theories).

136. RAWLS, *supra* note 29, at 12.

them—is in fact based upon a specific concept of the good. The methodology, though purportedly neutral, incorporates a particular account of selfhood and masquerades it as a universal concept. As Boyle remarks:

To accomplish all of this, Rawls must take a number of things away from his subjects. He says that he wants subjects that are motivated neither by altruism nor envy Self-interest, after all, is seen as rational What if the stripped-down subjects were designed by Kropotkin and Confucius . . . ?¹³⁷

This juxtaposition of Rawls's conception of the self with others who have clearly contradicting conceptions makes clear that the process of determining what is essential to the universal self is far from neutral. By accepting and dismissing various aspects of the self as relevant or irrelevant, lawmakers inevitably give primacy to their own sense of self and, in so doing, divorce various other aspects of selfhood that many people perceive as vital. Grillo makes this point in the context of a woman of color:

[U]nder a traditional legal approach, when her situation is analyzed as a woman, it is not analyzed as a Latina Her characteristics are not connected one to the other; instead, they exist separately, suspended in time and space. This fragmenting of identity by legal analysis . . . [is] entirely at odds with the concrete life of this woman¹³⁸

Sandel exposes the non-neutrality of modern jurisprudence another way when he critiques Rawls's reliance on social contract theory. Although Rawls creates a social contract that he believes is neutral and fair, Sandel notes that the mere query into fairness takes the contract out of the realm of neutrality:

As the non-trivial coherence of the "further question" attests ("But is it fair, what they have agreed to?"), actual contracts are not self-sufficient moral instruments but presuppose a background morality in the light of which the obligations arising from them may be qualified and assessed.¹³⁹

The question of fairness requires that we fall back upon some substantive understanding about what is just. In doing so, we necessarily rely on our own sense of self and what is good for it. Crenshaw makes a similar insight into the futility of searching for a universal jurisprudence: "To give rights meaning, people

137. Boyle, *supra* note 48, at 507. Flax also posits that "[t]his metanarrative requires a certain form of subject—an undetermined one, who can be the discoverer of truth. It requires a particular view of reality—rational, orderly and accessible to and through our thought." Flax, *supra* note 103, at 35.

138. Grillo, *supra* note 8, at 17.

139. SANDEL, *supra* note 30, at 109.

must specify the world; they must create a picture of 'what is' that grounds their normative interpretation."¹⁴⁰

Although the implications of rejecting the current legal subject cut deep and wide, it is impossible to predict their vast ramifications. What is needed is a sustained project that un-masks the power and coercion of the law and removes the cloak of invisibility that we call neutrality. This project must discover and make explicit the ways in which "the law is actually constitutive of our social existence."¹⁴¹ It will require a sustained community effort. I only attempt to sketch out some of the implications related to the intersectional thesis and the treatment of racism in law.

A. THE INTERSECTIONAL THESIS RECONSIDERED

The theory of the intersectional self presumes that identity is marked by many intersecting traits and that the implication of this cannot be understood by simply adding these traits together.¹⁴² For example, an African American female's experience is not adequately captured by adding the traits of a (White) female with that of a Black (male). Thus, in terms of the law, rules that prohibit racial and gender discrimination by addressing them as discrete phenomena do not adequately extend protection to a person marked by both subordinate gender and racial status.¹⁴³

But the intersectionality thesis can be understood to describe not just the sites of discrimination, but also the ontology of the self at these intersections. That is, the intersectional self can be construed as multiple because it is defined by the intersections of oppression. One of the possible implications of this notion of intersectionality is that a self not marked by systems of oppression (i.e., White, male, heterosexual, etc.) is not necessarily multiple. This conclusion, however, is a serious conceptual error that postmodernism and feminism have rejected, if

140. Crenshaw, *supra* note 46, at 1353.

141. Peter Gabel, *The Phenomenology of Rights-Consciousness and the Pact of the Withdrawn Selves*, 62 TEX. L. REV. 1563, 1564 (1984).

142. See *supra* Part II.A (explaining the theory of the intersectional self).

143. For example, Title VII of the Civil Rights Act of 1964 treats sources of discrimination as theoretically distinct by declaring: "[I]t shall be an unlawful employment practice for an employer . . . to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin." 42 U.S.C. § 2000e-2(a)(1) (1994) (emphasis added).

somewhat ambivalently.¹⁴⁴ Such an understanding of the intersectional self also leaves the "longing for coherence," seen in the experiences of oppressed groups, uncritically situated in the dominant and dominating narrative. It fails to consider the full implications of the assertion that the self is relational. It ignores that the dominant and the dominated are dialectically interdependent categories. The longing for coherence sought by many marginalized people, especially those marked by multiple oppressions, can be understood as a desire to pass, to attain the status of the dominant self. On some level this longing accepts the liberal notion that all categories, except that of the individual, are artificial and do not fully embrace the postmodern position that all categories, *including* that of the individual, are socially constructed.

If race and gender always mark the self, then the White male is also marked. He is no more a unitary, cohesive individual than is the Black female. Nevertheless, there is a lack of symmetry between the White male and the Black female. We can help to expose this by focusing on the marks of privilege and not solely on the marks of oppression. Marks of privilege will vary at different sites, times, and cultures. Once we develop a list, we can consider what should be added or modified at a given site. A preliminary list might start with male, White, Christian, able-bodied, heterosexual, and middle class. This list can be augmented. If an individual possesses all the possible markings of privilege at a site, that person holds the maximum privilege available. The advantage to this method of analysis is that it marks the unmarked and helps to expose the interdependency of privilege and oppression. It also makes it clear that all selves are at least partially constituted and multiple.

But a problem remains in thinking about intersectionality in this way. The approach I have just suggested implies that each of the marking categories are unitary—it implies that while gender and race may create an intersection, gender and race are unitary concepts. This is clearly wrong. Just as categories intersect to create a composite, each category itself is a composite.

When we look at Whiteness, for example, we see that Whiteness is made up of what it excludes, particularly Blackness. The excluded other does not just function externally—as

144. See *supra* notes 92-96 and accompanying text.

in the exclusion from a particular neighborhood—it also functions internally. The self is fractured by the part of the self—Whiteness—that must deny the part of the self that is equally present, yet loathed—Blackness. In a non-mutual way, Blackness necessarily carries Whiteness with it, externally and internally.¹⁴⁵ It is not enough to look at how categories intersect to create a sense of self. We must also examine how the categories themselves are created and maintained.¹⁴⁶ There may be times and places where it is pragmatically important to talk about these categories as more or less unitary, because we may need the broad concepts to communicate. They can and should be contested, though—especially when they implicate privilege and subordination. This approach affects how we think about intersectionality in two ways. It marks the privileged individual, and it exposes the multiple and relational nature of categories without trying to do away with the categories themselves.¹⁴⁷

B. THE MULTIPLE SELF AND THE LAW

There are a number of ways that acceptance of a fractured, multiple, and intersectional self would change the way we think about the law. The issue of agency and choice would clearly be altered by moving away from the unitary self. Indeed, some have tried to hold on to the unitary self by making the claim that we need agency and that multiplicity would destroy agency.¹⁴⁸ Although it may be true that we need agency, it seems to me that a fractured and multiple self does not entail the end of agency, only the reformulation of it. If we take seriously the claims of the constituted self, then we cannot situate agency solely within the individual. Instead, agency

145. See generally BALDWIN, *supra* note 1; powell, *supra* note 41, at 105-06.

146. powell, *supra* note 41, at 112-14; see also JUDITH BUTLER, *GENDER TROUBLE: FEMINISM AND THE SUBVERSION OF IDENTITY* 147-49 (1990).

147. For a discussion of the use of categories and the law, see *infra* Part IV.C.

148. Conversely, others have accepted multiplicity of the self and used it to advocate a newfound sense of agency and self-creation:

[D]on't give me your tenets and your laws. Don't give me your luke-warm gods. What I want is an accounting with all three cultures—white, Mexican, Indian. I want the freedom to carve and chisel my own face, to staunch the bleeding with ashes, to fashion my own gods out of my entrails. And if going home is denied me then I will have to stand and claim my space, making a new culture.

GLORIA ANZALDUA, *BORDERLANDS/LA FRONTERA: THE NEW MESTIZA* 22 (1987).

might be situated in the individual, in the intersubjective community, and in the structure of our society. Part of the flaw in claiming that agency dies with the individual is the assumption that if the self is fractured it must be radically determined and arbitrary. Judith Butler makes explicit this flawed reasoning:

Paradoxically, the reconceptualization of identity as an *effect*, that is, as *produced* or *generated*, opens up possibilities of "agency" that are insidiously foreclosed by positions that take identity categories as foundational and fixed. For an identity to be an effect means that it is neither fatally determined nor fully artificial and arbitrary. That the *constituted* status of identity is misconstrued along these two conflicting lines suggests the ways in which the feminist discourse on cultural construction remains trapped within the unnecessary binarism of free will and determinism. Construction is not opposed to agency; it is the necessary sense of agency, the very terms in which agency is articulated and becomes culturally intelligible.¹⁴⁹

The intersectional multiple self does not do away with agency. It does, though, require that we reconsider our understanding of agency.

The notion of the multiple self and the way we think about agency clearly implicates the validity of the intent standard used to evaluate claims of racial discrimination.¹⁵⁰ This standard is problematic in any context, but is clearly inapposite in the context of racism because it fundamentally mischaracterizes the way that racism functions within the individual and within society. Under current jurisprudence, the claim that someone intended to discriminate on the basis of race is interpreted as the assertion that this person engaged in the conscious thought process, "I dislike or disfavor this person because of their race, and therefore I shall behave adversely towards them." Such a characterization of racism is clearly erroneous under any but the modern theory of the self.

As psychoanalysis asserts, unconscious thought processes play a primary role in the interaction between the self and the "other." Thus, "requiring proof of conscious or intentional motivation . . . ignores much of what we understand about how the human mind works."¹⁵¹ As Charles Lawrence points out,

149. BUTLER, *supra* note 146, at 147.

150. See, e.g., *Washington v. Davis*, 426 U.S. 229, 239 (1976) (requiring discriminatory intent to state a racial equal protection claim under the fourteenth amendment).

151. Lawrence, *supra* note 106, at 323.

psychoanalysis clarifies that the intentional/unintentional dichotomy of current discrimination jurisprudence is a false one:

Racial matters are influenced in large part by factors that can be characterized as neither intentional—in the sense that certain outcomes are self-consciously sought—nor unintentional—in the sense that the outcomes are random, fortuitous, and uninfluenced by the decisionmaker's beliefs, desires and wishes.¹⁵²

This misconception of how the self functions has grave repercussions. It recognizes only a small subset of racist actions—those that can be proved to be a product of the conscious mind—and leaves unaddressed the vast majority of racist conduct. In our current social context, where overtly racist theories are generally discredited, the vast majority of racist actions are inevitably driven by semiconscious, subconscious, or unconscious motivations.

A related criticism of the intent standard follows from the postmodern critique of the self as socially constructed, constituted, and shaped by social context. Given the centrality of racism to the construction of both society and self (both minority and nonminority), any jurisprudential theory that assumes a static, *a priori* self will fail to recognize the full extent to which racist actions harm individuals and the full extent to which intersubjective discourses and structures contribute to the creation and perpetuation of these harms.

Current discrimination jurisprudence views racist actions as problematic because they remove the *a priori* self from its original position and treat it as if it exists at a point other than this origin by virtue of certain insignificant appendages (i.e., “arbitrary contingencies”) that this self possesses. Namely, the racialized self is assigned a position that causes it to be disfavored in various otherwise fair transactions that occur within society (e.g., applying for jobs, seeking housing, etc.). The law remedies these transactional aberrations by returning the self to its original and rightful position, regardless of its arbitrary contingencies.¹⁵³ Criticisms of the modern self recognize that racism is a far more complex and entrenched phenomenon. This remedial method is necessarily inadequate because it fails to acknowledge the larger discourse that causes these certain “arbitrary contingencies” to be consistently singled out. Also, it

152. *Id.* at 322.

153. Under this rubric of analysis, one understands the assertions that historical racism and race-conscious remedies such as affirmative action are equally abhorrent.

fails to acknowledge the effect of this discourse on the constitution of all subjects that exist within it.

Because the postmodern self is intersubjective, and thus dependent upon others for definition, oppression is a relational function: "you cannot get rid of subordination without eliminating the privilege as well."¹⁵⁴ In other words, contrary to current jurisprudence, there is no original position to which we can return the racialized self.¹⁵⁵ Furthermore, because the self is relational and context-dependent, race is an "intersubjective phenomenon"¹⁵⁶ whose meaning resides in a discourse outside of the minds of particular subjects, and functions to shape these subjects.

Because of the relational and constructed nature of the self, the racial discourse can be described as both "self-making" and "world-making" in that it structures both individual identities and interpersonal relations.¹⁵⁷ Put another way, race relations are "not always about what happens between defined groups but also involve [the] constitution of identities and groups."¹⁵⁸ Thus it is critical that we examine the way we create and utilize race in our society. For example, we often think about segregation as a limit upon the access of the excluded to economic resources. Modern discourse views segregation as problematic because it precludes certain individuals from having access to certain resources and opportunities; but the problem goes much deeper than that. As Martha Mahoney makes evident in her description of segregation, the problem goes to the very core of the constitution of the self and the other:

Segregation is the product of notions of black inferiority and white superiority, manifested geographically through the exclusion of blacks from more privileged white neighborhoods and the concentration of blacks into subordinated neighborhoods stigmatized by both race and poverty.¹⁵⁹

154. Grillo, *supra* note 8, at 18-19.

155. At least one court, however, has softened its stance on the notion of a single original position. *Robinson v. Jacksonville Shipyards, Inc.*, 760 F. Supp. 1486, 1524 (M.D. Fla. 1991) (applying a "reasonable woman" standard to a claim of memployment discrimination).

156. See DAVID ABRAM, *THE SPELL OF THE SENSUOUS: PERCEPTION AND LANGUAGE IN A MORE-THAN-HUMAN WORLD* 38 (1996).

157. Toni Morrison makes this point explicit when she describes the interdependence of racial identities in the definition of the White American ethos. See *supra* note 5 and accompanying text.

158. Mullin, *supra* note 82, at 22.

159. Martha Mahoney, *Segregation, Whiteness and Transformation*, 143 U. PA. L. REV. 1659, 1659 (1995).

Thus, segregation not only deprives the racialized self from accessing resources and opportunities, but it also plays a determinative role in the way that racialized groups are constituted, as well as how the dominant self perceives (and justifies) this perception of the racial "other."¹⁶⁰ We must shift our focus to the way the construction of Blackness and "otherness" is related to creating and maintaining the "normal" (White male) individual.¹⁶¹ As Toni Morrison does from a literary perspective, it is imperative that we look at how racial structures have marked Whites. For instance, David Roediger and Ruth Frankenberg suggest that it is privilege itself that creates and maintains Whiteness.¹⁶²

If the law is to adequately address racism, it must acknowledge and expose the central role that racial discourse plays in the construction of selves and our society, and the process by which this discourse is created and sustained. This requires recognizing that there will be strong, often unconscious, resistance to policies and actions that threaten the stability of the dominant self by threatening the stability of racial discourse.¹⁶³ It also requires the fundamental recognition that racism pervades and structures our society and is not merely present in the aberrant minds of a few racists. Finally, the law must address the harm that racism causes by its effect upon the development of racialized identities.¹⁶⁴ What this may require in the form of jurisprudence is uncertain, but our current "tort model" analysis of racism is certainly inaccurate

160. As Goldberg argues, "The poverty of the inner city infrastructure provides a racial sign of complex social disorders, of their manifestation when in fact it is their cause." GOLDBERG, *supra* note 16, at 197.

161. See generally THEODORE W. ALLEN, *THE INVENTION OF THE WHITE RACE*, VOLUME ONE: RACIAL OPPRESSION AND SOCIAL CONTROL (1994); MORRISON, *supra* note 5.

162. See generally DAVID ROEDIGER, *TOWARDS THE ABOLITION OF WHITENESS* (1994); Frankenberg, *supra* note 86.

163. The power of racial discourse in the sanctity of the self can be seen in how "slaveholders from the 17th century onward created and politicized racial categories to maintain the support of non-slaveholding whites, . . . convinc[ing] whites to support a system that was opposed to their own economic interests." Crenshaw, *supra* note 46, at 1374.

164. It is interesting to note that some 43 years ago the law recognized the stigmatic effect racism has upon individual development, but has failed to use this recognition to inform its practices. See *Brown v. Board of Educ.*, 347 U.S. 483, 483 (1954). The relational, constitutive self mandates that we remember the stigma identified in *Brown* and also recognize the privilege that is buttressed by this stigmatization.

and inadequate. We must reject the assumption that dominant groups are "innocently" marked by privilege.

C. THE USE OF CATEGORIES

One convention of law and social organization that warrants mention is the use of categories. There has been much discussion among postmodernists regarding the use of categories. Categorization plays a critical role in modernity's essentialist ordering of the self and reality. Also, language and discourse have a profound effect upon the constitution of the subject.

Most postmodernists seem to agree, with reservations, that categorization is a necessary tool for understanding and organization.¹⁶⁵ If we are to avoid a descent into meaningless plurality, it is necessary that we, particularly with respect to the law, make "claims about what we believe to be better or worse ways of being a person."¹⁶⁶ Furthermore, even though we recognize that categories are socially constructed, they nevertheless powerfully shape our experiential world and our own sense of selves.¹⁶⁷ If we are to respect individuals' senses of self, then to the extent that it is possible, we must also respect the intersubjective truths (categories) that shape this self.¹⁶⁸

When we use categories, we must do so with a functional goal in mind. We cannot "fall back on reassuring, universal standards to justify our beliefs."¹⁶⁹ This requires at least two

165. Some psychoanalysts would go even further and assert that the tendency to categorize is a universal byproduct of the human need to understand experience. See, e.g., Lawrence, *supra* note 106, at 337.

166. Flax, *supra* note 103, at 40. Harris has vividly illustrated this point, stating that "avoiding gender essentialism need not mean that the Holocaust and a corn cob are the same." Harris, *supra* note 58, at 586.

167. David Abram provides a cogent discussion of the difference between scientific and experiential truth, and the power of the latter despite its subjective nature. ABRAM, *supra* note 156, at 32.

168. Sandel makes a similar point:

The bonds between the self and (some) others are thus relaxed on the intersubjective account, but not so completely relaxed as to give way to a radically situated subject. The bonds that remain are not given to physical bodily differences between human beings, but by the capacity of the self through reflection to participate in the constitution of its identity, and where circumstances permit, to arrive at an expansive self-understanding.

SANDEL, *supra* note 30, at 144.

169. *Id.* As Haraway notes, this means that we abandon the quest for total explanations and instead seek "making partial, real connections." Haraway, *supra* note 59, at 202-03.

internalizations. First, a category's function must be explicit: there can be no "invisible" motive, or function masked in false legitimacy. As Flax notes, it is necessary that the "benefits and limitations [of the category] are always defined and take on meaning in relation to specific purposes which we must also specify and defend as our norms."¹⁷⁰ Concerning race, Haraway argues that we need to reconceptualize it as a "strategic essentialism" concerning "a certain set of political and moral rights and obligations that are argued to arise from a certain history."¹⁷¹ Second, in order to avoid the exclusivist and imperialist functions of universal categories, a category must be "tentative, relational, and unstable."¹⁷² We must continually evaluate a category's viability in terms of its purpose, the manner to which it serves its function, and the degree to which it may serve other unintended functions. The problem with the unitary self may extend beyond the problem of excluding normative logocentric, phallogocentric requirements for inclusion. The problem may be that modernity's goal of unity also requires the silencing of those internal voices that do not fit into the narratives used to maintain unity and construct the self.

CONCLUSION

As I have tried to make clear, my aim in this discussion has been to provide a sort of "critique in progress" of the self. Building upon the earlier endeavors of Trina Grillo and others, I have attempted not so much to advocate a particular theory, but rather to suggest that we bear in mind certain considerations as we maneuver in the discursive void that is left by the rejection of the modern unitary self. If we accept that the self is relational and multiple, our efforts to address oppression must focus upon the privileged as well as the oppressed. From a pragmatic standpoint, we must acknowledge that subordination affects the position of the dominant and the dominated. Postmodernists are unwittingly accepting many of the flawed parameters and limitations of modernism. An obvious example of this is the dichotomy of the essentialist/antiessentialist debate. Given the fundamental ramifications of reconstituting the self, we must critique the modern self externally as well as internally. We must not repeat the epistemological flaws of the

170. Flax, *supra* note 103, at 41.

171. Haraway, *supra* note 59, at 211.

172. Harris, *supra* note 58, at 586.

modernist project. The discourse on the postmodern self will be ongoing, with no fixed resolution on the horizon. We can only hope that the debate is undertaken prudently and with due respect for the great issues it affects.